

## § 14.803

## 38 CFR Ch. I (7–1–06 Edition)

that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) *Testimony*. Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) *VA records*. All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term “record” as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

### § 14.803 Policy.

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§ 14.800 through 14.810 only as authorized in accordance with these regulations. In determining whether to authorize testimony or the production of records, the determining official will consider the effect in this case, as well as in future cases generally, based on the factors set forth in § 14.804, which testifying or producing records not available for public disclosure will have on the ability of the agency or VA personnel to perform their official duties.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees’ private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation’s veterans access to the courts.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

### § 14.804 Factors to consider.

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning servicing the Nation’s veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release in camera, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute’s prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

(g) Whether the testimony or production of records, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.